REMARKS

This is in response to the non-final Office Action mailed November 14, 2007. In the Office Action, the Examiner notes that claims 1-11, 16, 17, 37, 40, 60, 67-70, 85, 86, 97, 99, 102, 104, 111, 113, 115, 116, 127-129, 137-139, and 169-174 are pending and rejected.

In view of the following discussion, Applicants submit that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103. Thus, Applicants believe that all of these claims are now in allowable form.

It is to be understood that Applicants do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant response.

REJECTIONS

35 U.S.C. §103

Claims 1-4, 9, 16, 17, 37, 40, 67-70, 85, 97, 99, 102, 104, 111, 113, 127-129, and 137-139

The Examiner has rejected claims 1-4, 9, 16, 17, 37, 40, 67-70, 85, 97, 99, 102, 104, 111, 113, 127-129, and 137-139 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication 2003/0066085 to Boyer '085 et al. (hereinafter "Boyer '085") in view of U.S. Patent 5,600,364 to Hendricks et al. (hereinafter Hendricks '364), U.S. Patent 5,517,502 to Bestler et al. (hereinafter "Bestler"), U.S. Patent Application Publication 2005/0138660 to Boyer et al. (hereinafter "Boyer '660") and U.S. patent application Publication 2003/0066085 to McKissick et al. (hereinafter "McKissick"). The Applicants note that the Examiner appears to inadvertently provided the wrong publication number for McKissick. The Applicants believe that the publication number for McKissick is actually 2006/0190966. Under such assumption, the Applicants respectfully traverse the rejection.

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). As discussed in Applicants' response(s) to previous Office Action(s), the Boyer '085, Bestler and Boyer '660 and references alone or in combination fail to teach or suggest Applicants' invention as a whole.

Applicants' independent claim 1 recites:

> 1. An apparatus that provides digital broadcast television programs to a subscriber, comprising:
> a first receiver module located at a first site of a first subscriber that receives program data;
> a head end for receiving a program selection from said first receiver module and generating an authorization code for said program selection;
> a network controller located at said head end for receiving said authorization signal and generating a local authorization signal;
> a second receiver module located at a second site of a second different subscriber geographically remote from the first site for receiving the local authorization code, wherein the authorization code allows the digital broadcast television programs to be decrypted for viewing;
> a transmitter that sends the program selection to the second site, wherein the program selection is made from the program data received by the first receiver module at the first site and contains the address of the second receiver module; and
> a memory coupled to the second receiver module for storing the received authorization code, wherein the local authorization code is stored in the memory until needed for decrypting the selected program at a future time. (Emphasis added).

In an exemplary embodiment, Applicants' invention teaches an apparatus and method that provides digital broadcast television programs to a subscriber comprising a first receiver module located at a first site of a first subscriber that receives program data and a second receiver module located at a second site of a second different subscriber geographically remote from the first site. For example, this exemplary embodiment allows a subscriber to provide access to a program, such as an annual subscription to a specialty channel or a sports program package to another subscriber, for example as a gift. (See e.g., Applicants' specification, p. 34, ll. 26-28). In addition,

the head end and a network controller located at the head end receive the program selection and generate the authorization code to enable viewing of the program selection. (See e.g., Applicants' specification, p. 39, ll. 16-23).

The Examiner concedes that Boyer '085, Hendricks '364, Bestler and Boyer '660 fail to teach or suggest a second receiver module located at a second site of a second different subscriber geographically remote from the first site for receiving the local authorization code, wherein the authorization code allows the digital broadcast television programs to be decrypted for viewing. (See Office Action, § 2, pp. 2-6). However, the Examiner asserts that McKissick bridges the substantial gap left by Boyer '085, Hendricks '364, Bestler and Boyer '660.

The Applicants respectfully submit that McKissick is not a proper prior art reference against the Applicants' invention. McKissick has a filing date of April 21, 2006, whereas Applicants' application has a filing date of November 13, 1998. Thus, McKissick is not a proper prior art reference against Applicants' patent application.

However, if the Examiner is relying on the fact that McKissick claims priority to a provisional application that was filed on August 26, 1998, then the Examiner must apply the McKissick provisional application as the prior art reference instead. Since a 111(a) application that claims priority to a provisional application does not have to recite the identical specification as that of the provisional application, the Examiner must provide prima facie evidence that the alleged teaching in the McKissick reference has direct support in the McKissick provisional application. Without such prima facie evidence, the Applicants respectfully submit that the McKissick reference is not a proper prior art reference against Applicants' application.

Therefore, as Boyer '085, Hendricks '364, Bestler and Boyer '660 fail to teach or suggest a second receiver module located at a second site of a second different subscriber geographically remote from the first site for receiving the local authorization code, wherein the authorization code allows the digital broadcast television programs to be decrypted for viewing and McKissick is not a proper prior art reference, the Applicants submit that independent claim 1 is patentable under 35 U.S.C. §103 over Boyer '085 in view of Hendricks '364, Bestler and Boyer '660. Independent claims 67,

99, 127 and 169 have relevant limitations similar to those discussed above in regards to claim 1. As such, Applicants submit that independent claims 67, 99, 127 and 169 are not obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder. Since all of the dependent claims that depend from the independent claims include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also patentable under 35 U.S.C. §103 over Boyer '085 in view of Hendricks '364, Bestler and Boyer '660. Therefore, Applicants respectfully request that the Examiner's rejection be withdrawn.

Claim 5

The Examiner has rejected claim 5 under 35 U.S.C. §103(a) as being unpatentable over Boyer '085, Hendricks '364, Bestler, Boyer '660 and McKissick in view of U.S. Patent 5,880,769 to Nemirofsky et al. (hereafter "Nemirofsky"). Applicants respectfully traverse the rejection.

Each ground of rejection applies only to dependent claims, and each is predicated on the validity of the rejection of the corresponding independent claims under 35 U.S.C. §103 over Boyer '085, Hendricks '364, Bestler, Boyer '660 and McKissick. Since the rejection of the corresponding independent claims under 35 U.S.C. §103 has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that any other additional references supply that which is missing from Boyer '085, Hendricks '364, Bestler, Boyer '660 and McKissick to render the independent claims unpatentable, these grounds of rejection cannot be maintained. As such, Applicants submit that claim 5 is patentable under 35 U.S.C. §103 over Boyer '085, Hendricks '364, Bestler, Boyer '660 and McKissick in view of Nemirofsky. Therefore, Applicants respectfully request that the Examiner's rejection be withdrawn.

Claims 6-8, 10, and 11

The Examiner has rejected claims 6-8, 10 and 11 under 35 U.S.C. §103(a) as being unpatentable over Boyer '085, Hendricks '364, Bestler, Boyer '660, McKissick and

Nemirofsky in view of U.S. Patent 5,809,204 to Young et al. (hereinafter "Young"). Applicants respectfully traverse the Examiner's rejection.

Each ground of rejection applies only to dependent claims, and each is predicated on the validity of the rejection of the corresponding independent claims under 35 U.S.C. §103 over Boyer '085, Hendricks '364, Bestler, Boyer '660 and McKissick. Since the rejection of the corresponding independent claims under 35 U.S.C. §103 has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that any other additional references supply that which is missing from Boyer '085, Hendricks '364, Bestler, Boyer '660 and McKissick to render the independent claims unpatentable, these grounds of rejection cannot be maintained. As such, Applicants submit that claims 6-8, 10 and 11 are patentable under 35 U.S.C. §103 over Boyer '085, Hendricks '364, Bestler, Boyer '660, McKissick and Nemirofsky in view of Young. Therefore, Applicants respectfully request that the Examiner's rejection be withdrawn.

Claims 60, 86, 115 and 116

The Examiner has rejected claims 60, 86, 115 and 116 under 35 U.S.C. §103(a) as being unpatentable over Boyer '085, Hendricks '364, Bestler, Boyer '660 and McKissick in view of U.S. Patent 5,734,853 to Hendricks (hereinafter "Hendricks '853"). Applicants respectfully traverse the Examiner's rejection.

Each ground of rejection applies only to dependent claims, and each is predicated on the validity of the rejection of the corresponding independent claims under 35 U.S.C. §103 over Boyer '085, Hendricks '364, Bestler, Boyer '660 and McKissick. Since the rejection of the corresponding independent claims under 35 U.S.C. §103 has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that any other additional references supply that which is missing from Boyer '085, Hendricks '364, Bestler, Boyer '660 and McKissick to render the independent claims unpatentable, these grounds of rejection cannot be maintained. As such, Applicants submit that claims 60, 86, 115 and 116 are patentable under 35 U.S.C. §103 over Boyer '085, Hendricks '364, Bestler, Boyer '660, McKissick and

Hendricks '853. Therefore, Applicants respectfully request that the Examiner's rejection be withdrawn.

CONCLUSION

Thus, Applicants submit that all of the claims presently in the application are allowable. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Chin (Jimmy) Kim at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 2/11/08

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